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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,786	02/28/2004	Paul Brent Rivers	03-BS046 (BS030553)	9426
38515	7590	04/05/2005	EXAMINER	
BAMBI FAIVRE WALTERS PO BOX 5743 WILLIAMSBURG, VA 23188			DURAND, PAUL R	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 04/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/789,786	Applicant(s) DIGGLE ET AL.	
	Examiner Paul Durand	Art Unit 3721	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 12-18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 19 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>03/04</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election of species I in figures 1-5 in the reply filed on 3/4/2005 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The restriction requirement mailed on 2/10/2005 is a restriction of different species of the same genus as disclosed through the drawings and the specification, and as such are considered independent inventions. Inherently, plural independent inventions in a single application are a burden on the examiner and are restricted per the MPEP § 803. Additionally the examiner asserts that under this section that he has satisfied his *prima facie* showing by referring applicants to the particular drawings in the disclosure to show the applicant the different types of independent inventions that are contained in the application. Furthermore, applicant is referred to § 808.01(a) which details the reasons for a species restriction, §§ 806.04(a) – 806.04(i) for an explanation of a species restriction, §§ 806.05 – 806.05(i) for an explanation of distinct inventions and §802.01, which explains the difference between distinct and independent inventions.

Applicant's reply to the restriction requirement is also incomplete. As stated in the Office Action mailed 2/10/2005, applicant is required to *submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case*. Support for this is found in § 809.02 (a). In the

traversal, applicant has not provided any support to show the examiner why the species are obvious variants, but instead has chosen to show examiner why the restriction is improper due to a violation of the due process. As detailed above in § 818.03(a) and since the applicant has not properly traversed the restriction, it is deemed to be without traverse.

2. Claims 12-18 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/2/2005.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, it is unclear to the examiner what is being claimed. From the disclosure and the drawings, the invention is comprised of an outer body and an inner sleeve. However, the claim recites what appear to be a four-piece device comprised of a tubular body, a body, a sleeve and a driver sleeve.

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 1, 11 and 19 are rejected under 35 U.S.C. 102(b) as anticipated by Iannone (US 4,315,551).

In regard to claim 1 and as the examiner understands the claim, Iannone discloses the invention as claimed including a tubular body 22, an elongated shank portion, the body having a closed end 40, extending outwardly, an open end 26, and an interior longitudinal portion into which a sleeve in the form of boss 50 is inserted and which is controlled by the shape of the longitudinal bore, the sleeve comprising a longitudinal bore 60 for fitment over a shafted body 10 (see Figs. 1, 2 and C1, L35 – C3, L47).

In regard to claim 11, Iannone discloses the invention as claimed including rounded edges (see Figs. 1-4)

In regard to claim 19, Iannone discloses the invention as claimed including positioning a driver cap over the end of a shafted body, the cap a tubular body 22, an elongated shank portion, the body having a closed end 40, extending outwardly, an open end 26, and an interior longitudinal portion into which a sleeve in the form of boss 50 is inserted and which is controlled by the shape of the longitudinal bore, the sleeve comprising a longitudinal bore 60 for fitment over a shafted body 10 and applying a

force to the end of the cap to drive the shaft in the ground (see Figs. 1,2 and C1,L35 – C3,L47).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 2-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iannone.

In regard to claims 2 and 3, Iannone discloses the invention substantially as claimed as applied to claim 1 except for the explicit type and color of the material of the driver cap other than steel. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a driver assembly manufactured from polymer, glass, plastic, ceramic or glass, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of design choice. *In re Leshin*, 125 USPQ 416. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Iannone with an assembly manufactured from polymer, glass, plastic, ceramic or glass for the purpose of choosing a suitable material for an intended use.

In regard to claims 4-7, Iannone discloses the invention substantially as claimed including a body having a cylindrical shape. What Iannone does not disclose is the body being hexagonal polygonal or rectangular. However, the examiner takes Official Notice that it is old and well known in the art to provide a body having different shapes for the purpose of accommodating differently shaped rod shafts and heads. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Iannone with an assembly and body that is hexagonal polygonal or rectangular for the purpose of accommodating differently shaped rod shafts and heads.

In regard to claims 8-10, Iannone discloses the invention substantially as claimed as applied to claim 1 except for the explicit range of dimensions for the assembly. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided a specific range of dimension for the diameters and length, since it has been held that where the general conditions of a claim are disclosed, in the prior art, discovering the optimum or workable range involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Conclusion

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Daniels, McDowell, Lundgren, Bell, Pray, Kikuchi, Leishman, Hecock and Lord have been cited to devices having similar structure.

Art Unit: 3721

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paul Durand whose telephone number is 571-272-4459. The examiner can normally be reached on 0730-1800, Monday - Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Paul Durand
March 31, 2005



Rinaldi I. Rada
Supervisory Patent Examiner
Group 3700